

OCA FILE

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NSDD

2 August 1988  
OCA 2564-88

MEMORANDUM FOR: Deputy Director for Administration  
Deputy Executive Secretary  
C/ALD/OGC  
C/LIT/OGC  
C/[ ]/DDA

FROM: [ ] Legislation Division  
Office of Congressional Affairs

RE: H.R. 5092 - Brooks Bill For Registration of NSDD's

1. Attached is an advance copy of H.R. 5092, the "Presidential Directives and Records Accountability Act" recently introduced by Representative Brooks. As previously noted, hearings may be held on it this week. We would appreciate your comments on all portions of the bill but your attention is especially directed the following.

2. "Executive Directives". Subsection (a) (3) of Section 2 of the bill (page 2, lines 12 - 23) amends Section 1501 of Title 44 United States so as to create a new category of records: the "Executive Directive". Subsection (b) requires these be filed with the Office of the Federal Register and become part of the Archives of the United States. It further requires that copies be forwarded to the Speaker of the House and the President pro tempore of the Senate and that any necessary security be provided as set forth in House and Senate rules and procedures. Apparently it is through this mechanism that Representative Brooks seeks to achieve his announced goal of compelling the disclosure, registration and Congressional notification of National Security Decision Directives (NSDD's).

3. White House Office of Records Management. Section 3 of the bill (p. 5, lines 3 - 10) would create a White House Office of Records Management and require it to implement all records requirements for the White House. The Office would have to consult with the Archivist of the United States before changing office practices, thereby giving the Archivist a significant role in Presidential records policy matters.

4. Archivist As Executive Branch "Record" Arbiter.  
Section 3 (c) of the bill (page 5, lines 11 -17) makes the Archivist the final arbiter of what constitutes a "record" under chapters 21-33 of Title 44. This provision appears to expand the powers and duties of the Archivist vis a vis federal agency records management practice.

5. Please forward to this office your comments and questions. Your cooperation is most appreciated.

Attachment

OCA/LEG, [redacted] (2 August 1988)

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HLC

100TH CONGRESS  
2D SESSION

H. R. 5092

IN THE HOUSE OF REPRESENTATIVES

Mr. BROOKS introduced the following bill; which was referred to  
the Committee on \_\_\_\_\_

A BILL

To provide accountability in the use of presidential directives,  
for other purposes.

- 1 Be it enacted by the Senate and House of Representatives
- 2 of the United States of America in Congress assembled,

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1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the ``Presidential Directives  
3 and Records Accountability Act``.

4 SEC. 2. CONTROL OF THE USE OF EXECUTIVE DIRECTIVES.

5 (a) DEFINITION OF EXECUTIVE DIRECTIVE.--Section 1501 of  
6 title 44, United States Code, is amended--

7 (1) by designating the three indented paragraphs  
8 thereof as paragraphs (1), (2), and (3), respectively;

9 (2) by striking out the period at the end of such  
10 paragraph (3) and inserting a semicolon;

11 (3) by adding at the end thereof the following:

12 `` (4) `Executive directive' means any written  
13 instrument, other than a Presidential proclamation or  
14 Executive order, that--

15 `` (A) is signed or endorsed by, or is issued at  
16 the direction of, the President, or an appointee in  
17 the Executive office of the President; and

18 `` (B) (i) establishes policy, (ii) directs the  
19 carrying out of law or policy, (iii) authorizes or  
20 requires the use of appropriated funds or other  
21 resources (including personnel), or (iv) otherwise  
22 asserts or appears to assert an authority of the  
23 President,

24 except that such term does not include a finding under  
25 section 662 of the Foreign Assistance Act of 1961 (22

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1 U.S.C. 2422).''.

2 (b) FILING AND REGISTRATION OF EXECUTIVE

3 DIRECTIVES.--Section 1503 of such title is amended--

4 (1) by inserting ``and directives'' after ``Filing  
5 documents'' in the heading of such section;

6 (2) by designating the text of such section as  
7 subsection (a) thereof; and

8 (3) by adding at the end thereof the following new  
9 subsection:

10 `` (b)(1) The original and three duplicate originals or  
11 certified copies of each Executive directive shall be filed  
12 with the Office of the Federal Register on the next business  
13 day. The Archivist shall cause to be noted on the original  
14 and copies of such directive the day and hour of the filing  
15 and shall number such filings sequentially in the order  
16 filed. The original of all Executive directives shall be  
17 permanently retained as a part of the Archives of the United  
18 States.

19 `` (2) Upon filing, one copy of each Executive directive  
20 shall be immediately transmitted to the Speaker of the House  
21 of Representatives, and one copy shall be immediately  
22 transmitted to the President pro tempore of the Senate. In  
23 the case of directives which contain information which may be  
24 withheld from disclosure under section 552(b)(1) of such  
25 title, such copies shall be transmitted and maintained in the

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15. Code

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1 manner required by the rules and procedures of the House of  
2 Representatives and the Senate, respectively, to protect the  
3 information therein from improper disclosure.".

4 SEC. 3. PROTECTION OF PRESIDENTIAL AND OTHER FEDERAL RECORDS.

5 (a) INFORMING EMPLOYEES OF PRESIDENTIAL RECORDS ACT  
6 REQUIREMENTS.--Chapter 22 of title 44, United States Code, is  
7 amended by inserting after section 2207 the following new  
8 section:

9 ``§2208. Informing Employees of Requirements

10 `` (a) Each officer or employee who is appointed or  
11 detailed to, or otherwise employed in, a position in the  
12 Executive Office of the President or Vice President, or on  
13 the immediate staff of the President or Vice President, shall  
14 receive, and shall, at the time of employment, sign a receipt  
15 for, a notice describing the requirements of this chapter and  
16 of the procedures for controlling, managing, and preserving  
17 Presidential or Vice Presidential records.

18 `` (b) Each such officer or employee shall, at the time of  
19 vacating any such position, receive a copy of the notice  
20 required by subsection (a).

21 `` (c) The notice required by subsection (a) shall be  
22 prepared jointly by the Archivist and counsel to the  
23 President.

24 (b) ESTABLISHMENT OF OFFICE OF RECORDS

25 MANAGEMENT.--Chapter 22 of title 44, United States Code, is

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1 further amended by adding at the end thereof the following  
2 new section:

3 ``§2209. Office of Records Management.

4 ``There shall be in the Executive Office of the President  
5 an Office of Records Management. The Office shall be  
6 responsible for securing compliance with the requirements of  
7 this chapter and for carrying out such other functions as may  
8 be assigned by the President. The Office shall consult with  
9 the Archivist before making any significant change in the  
10 practices or procedures used to secure such compliance.''. .

11 (c) AUTHORITY OF THE ARCHIVIST TO DEFINE

12 ``RECORD''.--Section 3301 of title 44, United States Code, is  
13 amended by adding at the end thereof the following new  
14 sentence: ``The Archivist shall have final authority in the  
15 Executive branch to determine what constitutes such a record  
16 for purposes of chapters 21 through 33 of this title and may  
17 issue such rules, regulations, and guidelines as may be  
18 necessary for such purposes.''. .

19 (d) CONFORMING AND TECHNICAL AMENDMENTS.--

20 (1) The analysis for chapter 22 of title 44, United  
21 States Code, is amended--

22 (A) by striking out the item pertaining to  
23 section 2205 and inserting the following:

``2205. Exceptions to restricted access.''; and

24 (B) by inserting after the item pertaining to

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1 section 2207 the following:

- 2208. Informing employees of requirements.
- 2209. Office of Records Management.

2 (2) Section 2201(3) of such title is amended by

3 striking out ``therof`` and inserting ``thereof``.